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SUPERIOR COURT

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SANDRA K MARKHAM, CLERK

BY:

Kelly Gresham

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

CAUSE NO. P1300CR201001325

RESPONSE TO MOTION FOR
CHANGE OF VENUE

Assigned to Hon. Warren R. Darrow
Division PTB

ORAL ARGUMENT REQUESTED

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby responds to Defendant's Motion for Change of Venue. This motion is supported by the attached Memorandum of Points and Authorities which is attached hereto and incorporated herein.

MEMORANDUM OF POINTS AND AUTHORITIES

Rule 10.3(b), Ariz. R. Crim. P., pertaining to a change of venue for trial due to pretrial publicity, states:

Whenever the grounds for change of place of trial are based on pretrial publicity, the moving party shall be required to prove that the dissemination of the prejudiced material will probably result in the party being deprived of a fair trial.

Prejudice to the defendant can be either presumed or actual. *State v. Blakely*, 204 Ariz. 429, 434, 65 P.3d 77, 82 (2003). Presumed prejudice results when the publicity is "so outrageous that it promises to turn the trial into a mockery of justice." *State v. Bible*, 175 Ariz. 549, 563,

1 858 P.2d 1152, 1166 (1993). "The adverse publicity must be so extensively pervasive and
2 prejudicial that 'the court cannot give credibility to the jurors' attestations, during voir dire, that
3 they could decide fairly.'" *State v. Davolt*, 207 Ariz. 191, 206, 84 P.3d 456, 471 (2004). The
4 standard for presumed prejudice is high, and the Arizona Supreme Court has failed to presume
5 prejudice when the publicity was "primarily factual and non-inflammatory or the publicity did not
6 occur close in time to the trial." *Id.* (other citations omitted). In evaluating whether prejudice
7 should be presumed, a trial court should consider not only the quantity of publicity but also
8 whether it is factual, whether it is inflammatory in nature, its frequency and duration, and its
9 proximity to trial. *State v. Nordstrom*, 200 Ariz. 229, 239, 25 P.3d 717, 727 (2001).

11 Defendant has the "extremely heavy" burden to demonstrate that the pretrial publicity is
12 presumptively prejudicial. *Bible, supra*, 175 Ariz. at 564, 858 P.2d at 1167 (citing *Coleman v.*
13 *Kemp*, 778 F.2d 1487, 1537 (11th Cir. 1985)). Simply because a juror may have knowledge of the
14 case does not mean that the juror is unable to set aside that knowledge in evaluating the evidence
15 adduced at trial. *State v. Gretzler*, 126 Ariz. 60, 77, 612 P.2d 1023, 1040 (1980) ("Neither prior
16 knowledge of the case nor an opinion concerning the defendant's guilt will disqualify a juror
17 unless there is evidence that the juror is unable to set aside such knowledge or opinion in
18 evaluating the evidence presented at trial."); *State v. Endreson*, 109 Ariz. 117, 506 P.2d 248
19 (1973) (half of the trial jury had knowledge of the case); *State v. Schmid*, 109 Ariz. 349, 509 P.2d
20 619 (1973) (all jurors had knowledge of the case).

23 Defendant has failed to meet the "very heavy" burden of establishing that prejudice should
24 be presumed. *Bible, supra*, 175 Ariz. at 564, 858 P.2d at 1167. In *Bible, supra*, the Arizona
25 Supreme Court did not find a presumption of prejudice in a case that arguably had far more
26 extensive local publicity than the instant case. Bible was an ex-convict, who kidnapped, raped

1 and brutally murdered a nine-year-old girl in Flagstaff. The Court noted that due to the pervasive
2 pretrial publicity in Flagstaff and Coconino County (populations of approximately 45,000 and
3 100,000 respectively) “nearly all potential jurors had some knowledge of the case.” *Bible, supra*,
4 175 Ariz. at 563, 858 P.2d at 1166. Local newspapers even generated reports on inadmissible
5 evidence, including that the defendant had “flunked a lie detector test,” and that the defendant
6 was a convicted “child molester” who had committed “child rape.” *Id.* at 564, 858 P.2d at 1167.
7 Nevertheless, the Court could not conclude that the trial was “utterly corrupted” by the publicity
8 and, therefore, refused to “presume prejudice.” *Id.* at 565, 858 P.2d at 1168 (citing *Murphy v.*
9 *Florida*, 421 U.S. 794, 798, 95 S.Ct. 2031, 2035 (1975)).

11 Similarly, in *State v. Cruz*, 218 Ariz. 149, 181 P.3d 196 (2008), the Arizona Supreme
12 Court did not presume prejudice where local publicity was arguably more extensive than the
13 instant case. In *Cruz*, the defendant shot and killed a police officer during a traffic stop in
14 Tucson. It was the first Tucson officer death in the line of duty in 21 years. As noted by the
15 Court,
16

17 [t]he media extensively covered the death of Officer Hardesty and Cruz’s
18 apprehension. Hundreds of television broadcasts and newspaper articles reported the
19 crime and Cruz’s suspected guilt. Local radio stations and grocery stores raised money for
20 Hardesty’s family; a billboard was erected on a major Tucson street that proclaimed,
21 “Officer Patrick K. Hardesty, Your service to Tucson will never be forgotten”; flags were
22 flown at half staff; and a local police substation was named for Hardesty.

23 *Id.* at 157, 181 P.3d at 204. Nonetheless, the Court found the pretrial publicity, although
24 extensive, was not “‘outrageous’ and did not create a ‘carnival-like’ atmosphere.” *Id.* The Court
25 noted that the information disseminated to the public was “almost entirely accurate” and “most of
26 the coverage occurred more than a year before trial” and found Cruz had failed to meet the “very
heavy burden” of establishing that prejudice should be presumed. *Id.*

1 Defendant has failed to make any showing that even approaches the circumstances
2 outlined in the cases reviewed above, and therefore, no presumption of prejudice should be found.
3 A close reading of Defendant's motion clearly shows that Defendant has not met his burden.
4 Each story indicates that the Defendant is *accused* of killing his ex-wife. There is no strong
5 implication or conclusion in these news reports that the Defendant is guilty as charged. The fact
6 that the news reports describe the Defendant as a stockbroker simply does not rise to the level of
7 presumed prejudice. Finally, the blogs from the local newspaper have an almost equal split
8 between pro and anti defendant bias.

9
10 In the absence of presumed prejudice, a defendant must demonstrate that pretrial
11 publicity is actually prejudicial and will likely deprive him of a fair trial. *State v. Davolt, supra*,
12 207 Ariz. at 206, 84 P.3d at 471.

13
14 To establish actual prejudice, a defendant must show the jurors have such strong feelings
15 and preconceived notions of a defendant's guilt and that they are unable to put those notions
16 aside. That is simply not the case before the Court.

17
18 Prior knowledge of the case alone is not enough to establish prejudice. *State v. Chaney*,
19 141 Ariz. 295, 302, 686 P.2d 1265, 1272 (1984). As recently noted by the United States
20 Supreme Court, "Prominence does not necessarily produce prejudice, and juror *impartiality*, we
21 have reiterated, does not require *ignorance*." *Skilling v. United States*, 130 S.Ct. 2896, 177
22 L.Ed. 2d 619 (2010). Change of venue should be granted only if this Court finds the jurors
23 cannot lay aside their preconceived notions and render a verdict based on the evidence
24 presented at trial. *Id.*

25
26 "An examination of the jurors, through voir dire process, is an effective means by which
to determine the effects or influence of pretrial publicity on the jurors." *State v. Blakely, supra*,

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1 204 Ariz. 429, 434, 65 P.3d 77, 82 (2003) (quoting, *State v. Greenawalt*, 128 Ariz. 150, 163, 624
2 P.2d 828, 841 (1981). Through proper *voir dire* examination, a fair and impartial jury will be
3 empanelled.

4 A review of the returned juror questionnaires in this case clearly demonstrates that a
5 change of venue is not warranted. To date, 679 questionnaires have been returned. By the State's
6 review, only 114 potential jurors could not be fair and impartial jurors. An additional 131 could
7 be excused for hardship. That leaves well over 400 potential jurors.
8

9 Media coverage in the instant case has not contaminated Yavapai County citizens who
10 will be asked to serve as potential jurors at the time of trial. Pretrial publicity is neither actual nor
11 presumed. Defendant's claim of prejudice is purely speculative. Defendant has not met the
12 extremely heavy burden demonstrating pretrial publicity has prejudiced his case to the extent that
13 a change of venue is warranted.
14

15 Through the *voir dire* process it will be determined that Yavapai County citizens asked to
16 serve on the jury can lay aside any preconceived notions they may have and render a fair verdict
17 based on all of the evidence presented and testimony provided. At the conclusion of *voir dire*, a
18 fair and impartial jury will be empanelled.

19 Therefore, based on the foregoing, the State respectfully requests that the Court deny
20 Defendant's motion for change of venue.

21 **RESPECTFULLY SUBMITTED** this 15 day of August, 2011.

22 **Sheila Sullivan Polk**
23 **YAVAPAI COUNTY ATTORNEY**

24
25 By: 
26

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COPY of the foregoing **Emailed** this
15th day of August, 2011, to:

Honorable Warren R. Darrow
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Via email to Diane Troxell: DTroxell@courts.az.gov

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